

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KYLE ROBERT JAMES,

Plaintiff,

v.

BARBARA LEE, et al.,

Defendants.¹

Case No.: 16-cv-01592-AJB (JLB),
consolidated with 17-cv-00859-AJB
(MDD)

**ORDER ON PLAINTIFF'S
MISCELLANEOUS MOTIONS**

[ECF Nos. 140; 142; 155]

Before the Court are several miscellaneous motions filed by Plaintiff Kyle Robert James. For the reasons set forth below, Plaintiff's motion for copies (ECF No. 140 at 1–2), motion for additional interrogatories (ECF No. 142), and motion to exclude evidence (ECF No. 155) are **DENIED**, and Plaintiff's motion to compel (ECF No. 140 at 3–8) is **GRANTED in part and DENIED in part**.

I. MOTION FOR COPY OF INTERROGATORIES

Plaintiff requests that the Court direct the Clerk of Court to send him a free copy of the exhibits he attached to his motion to compel (ECF No. 140 at 10–16), which are

¹ Defendant Mark Kania is the only remaining defendant in this case. Therefore, all references to “Defendant” in this Order are to Defendant Kania.

1 excerpts of Defendant's responses to his interrogatories. (*Id.* at 1.) Defendant provides in
 2 opposition that he has since mailed a copy of the requested exhibits to Plaintiff. (ECF Nos.
 3 143 at 1; 147 at 2.) Plaintiff's request is therefore **DENIED as moot**. Additionally,
 4 although Plaintiff is proceeding *in forma pauperis* (ECF No. 3), he is not entitled to free
 5 photocopies at the Court's expense simply because of his *in forma pauperis* status. The
 6 statute providing authority to proceed *in forma pauperis*, 28 U.S.C. § 1915, does not
 7 include the right to obtain court documents without payment. *See Sands v. Lewis*, 889 F.2d
 8 1166, 1169 (9th Cir. 1990) (per curiam) (stating that prisoners have no constitutional right
 9 to free photocopy services), *overruled on other grounds by Lewis v. Casey*, 518 U.S. 343,
 10 350–55 (1996); *see also In re Richard*, 914 F.2d 1526, 1527 (6th Cir. 1990) (stating that
 11 28 U.S.C. § 1915 “does not give the litigant a right to have documents copied and returned
 12 to him at government expense”).

13 **II. MOTION TO COMPEL**

14 Plaintiff moves the Court for an order compelling Defendant to provide further
 15 responses to his Interrogatory Nos. 1, 7, 16, 18, and 19. (ECF No. 140 at 5–8.) Defendant
 16 opposes Plaintiff's motion, and argues that the Court it should deny it as untimely and on
 17 the merits. (ECF No. 147 at 2–4.)

18 **A. Legal Standard**

19 A party is entitled to seek discovery of any non-privileged matter that is relevant to
 20 his claims and proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). Federal Rule
 21 of Civil Procedure 33 provides that a party may serve on any other party interrogatories
 22 that relate to any matter within the scope of discovery defined in Rule 26(b). Fed. R. Civ.
 23 P. 33(a)(2). If a party fails to answer an interrogatory, or if the response provided is evasive
 24 or incomplete, the propounding party may bring a motion to compel. Fed. R. Civ. P. 37(a).
 25 “The party seeking to compel discovery has the burden of establishing that his request
 26 satisfies the relevancy requirements of Rule 26(b)(1).” *Bryant v. Ochoa*, No. 07cv200 JM
 27 (PCL), 2009 WL 1390794, at *1 (S.D. Cal. May 14, 2009) (citing *Soto v. City of Concord*,
 28 162 F.R.D. 603, 610 (N.D. Cal. 1995)). District courts have broad discretion to determine

1 relevancy for discovery purposes. *See Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir.
 2 2002). “Thereafter, the party opposing discovery has the burden of showing that the
 3 discovery should be prohibited, and the burden of clarifying, explaining[,] or supporting
 4 its objections.” *Bryant*, 2009 WL 1390794, at *1 (citing *DIRECTV, Inc. v. Trone*, 209
 5 F.R.D. 455, 458 (C.D. Cal. 2002)).

6 **B. Timeliness of Plaintiff’s Motion**

7 Defendant first argues that Plaintiff’s motion should be denied because it is untimely
 8 per the Court’s Civil Chambers Rules, which provide that “[a]ny discovery disputes must
 9 be brought to the Court no later than 30 calendar days after the date upon which the event
 10 giving rise to the dispute occurred.” (ECF No. 147 at 2–3 (quoting J. Burkhardt Civ.
 11 Chambers R. § IV.F.)) Defendant provides that he served a response to Interrogatory
 12 No. 1 on July 2, 2018, a response to Interrogatory No. 2 on August 20, 2018, and responses
 13 to Interrogatory Nos. 16, 18, and 19 on June 17, 2019, making Plaintiff’s motion
 14 “extremely untimely.” (*Id.* at 3.)

15 The Court acknowledges that Plaintiff’s motion is more than a year late with respect
 16 to Interrogatory Nos. 1 and 2 and approximately four months late with respect to
 17 Interrogatory Nos. 16, 18, and 19. Moreover, Plaintiff was provided leave to reply to
 18 Defendant’s opposition (ECF No. 145), yet he did not file a timely reply and has not
 19 otherwise offered any justification for his delay in bringing the motion. The Court could
 20 deny Plaintiff’s motion solely due to its untimeliness. However, the Court ordinarily warns
 21 litigants of the consequences of failing to comply with Chambers Rules on discovery
 22 disputes in its scheduling orders. As a scheduling order has yet to issue in this case, the
 23 Court has not yet cautioned Plaintiff that he must comply with Chambers Rules. Taking
 24 into consideration that this is Plaintiff’s first warning and that Plaintiff is a *pro se*,
 25 incarcerated litigant, the Court will address Plaintiff’s motion on the merits.

26 **C. Merits of Plaintiff’s Arguments**

27 1. Interrogatory Nos. 1 and 7

28 Interrogatory Nos. 1 and 7 and Defendant’s responses thereto are as follows:

1 *Interrogatory No. 1:*

2 Why did you “hogtie” plaintiff Kyle James naked instead of putting clothes
3 on him first?

4 *Response to Interrogatory No. 1:*

5 Responding party objects to the interrogatory on the grounds that it is
6 vague and ambiguous as to time and the term “hogtie.” Responding party also
7 objects on the grounds that the interrogatory lacks foundation and assumes
8 facts. Specifically, the interrogatory incorrectly contends that Responding
9 Party “hogtied” Plaintiff and had Plaintiff “naked instead of putting clothes
on him first.” Subject to and without waiving the foregoing objections,
Responding Party responds as follows.

10 Plaintiff has a long history of violent and disruptive behavior while in
11 custody, including: fighting with deputies, secreting tools to facilitate escape,
12 threatening to harm and kill deputies and other inmates, possessing makeshift
weapons, failing to obey staff, and interfering with jail operations.

13 On July 3, 2014, Plaintiff was found to have secreted a handcuff key
14 and a key used to unlock waist chains in his rectum, in a plot to escape
15 Sheriff’s custody. At the time Sheriff’s deputies made contact with Plaintiff
16 to investigate the unknown contraband he was hiding in his rectum, Plaintiff
17 was wearing only underwear. Plaintiff was strapped to a gurney by jail staff
18 so he could be x-rayed and to give him the opportunity to remove the
19 contraband himself. In order to do so safely and maintain the security of the
20 facility, Plaintiff’s underwear was removed and he was properly restrained.
21 Plaintiff initially refused to cooperate, threatened jail staff, and emphatically
denied being in possession of any contraband. After approximately one hour,
Plaintiff admitted to possessing keys and eventually retrieved both keys from
his rectum.

22 *Interrogatory No. 7:*

23 In your response to Plaintiff[’s] Interrogatory No.1 (One), No.2 (Two),
24 No.3 (Three), and No.6 (Six) you state[,] “Plaintiff has a long history of
25 violent and disruptive behavior while in custody, including: fighting with
26 deputies, secreting tools to facilitate escape, threatening to harm and kill
27 deputies and other inmates, possessing makeshift weapons, failing to obey
28 staff, and interfering with jail operations.” How is it possible that you could
have known on 7/3/14 that Kyle James fought with deputies on 1/23/16 and

1 was found with on 2/24/15 what was alleged by deputies to be “Jail made
2 weapons”? (Which were events that took place after 7/3/14).

3 *Response to Interrogatory No. 7:*

4 Responding Party objects to the interrogatory on the grounds that it is
5 vague, ambiguous, and unintelligible so as to make a response impossible
6 without speculation as to the meaning of Plaintiff’s request. Responding Party
7 also objects to the interrogatory on the grounds that it lacks foundation and
8 assumes facts regarding the events and timeline of events referenced in
Responding Party’s prior discovery responses. Subject to and without
waiving the foregoing objections, Responding Party responds as follows:

9 Plaintiff has a long history of violent and disruptive behavior while in
10 custody. This includes threatening physical harm and death to jail staff and
11 other inmates prior to July 3, 2014.

12 (ECF No. 140 at 10–12.)

13 Plaintiff argues that Defendant’s response to Interrogatory No. 1 is “evasive and
14 deficient” because it is “perjured and impeachable.” (*Id.* at 5.) Plaintiff contends that as
15 of July 3, 2014, the date of the incident in this case, Defendant could not have known that
16 Plaintiff had a history of possessing makeshift weapons or fighting with other deputies,
17 because those events took place after July 3, 2014. (*Id.*) Plaintiff further argues that
18 Defendant’s responses to Interrogatory Nos. 1 and 7 are “so evasive” they are “tantamount
19 to no answers at all.” (*Id.* at 6.)

20 In opposition, Defendant argues that his responses to Interrogatory Nos. 1 and 7
21 included “appropriate objections to the argumentative phrasing and terminology” in the
22 interrogatories. (ECF No. 147 at 3.) Defendant further argues that, despite his objections,
23 he provided substantive responses, and “[t]he fact that Plaintiff does not like the answers
24 or disputes the factual contentions in the responses is not [a] ground to compel
25 supplemental responses.” (*Id.* at 3–4.)

26 The Court finds that, notwithstanding Defendant’s objections to Interrogatory
27 No. 1, he has sufficiently responded to it. Defendant’s response substantively addresses

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1 Plaintiff's interrogatory, and as Defendant asserts, the fact that Plaintiff may not agree with
2 the response does not render it deficient.

3 With respect to Interrogatory No. 7, the Court finds that, notwithstanding
4 Defendant's objections, he has sufficiently responded to it. Defendant's response
5 substantively addresses Plaintiff's interrogatory by stating that Plaintiff's "long history of
6 violent and disruptive behavior while in custody . . . includes threatening physical harm
7 and death to jail staff and other inmates prior to July 3, 2014." Again, the fact that Plaintiff
8 may not agree with Defendant's response does not render it deficient.

9 Accordingly, Plaintiff's request to compel further responses to Interrogatory Nos. 1
10 and 7 is **DENIED**.

11 2. Interrogatory No. 16

12 Interrogatory No. 16 and Defendant's response thereto are as follows:

13 *Interrogatory No. 16:*

14 As watch commander on date 7-3-2014 at GBDF during the handcuff
15 key incident involving the Plaintiff Kyle James, you ordered the restraints to
16 be applied to Kyle James in the fashion that was applied that day. Is it true it
17 was you [sic] responsibility to ensure medical personal [sic] to be present
18 during the retention and use of the restraint equipment used on Kyle James on
19 7-3-2014 at least twice every thirty minutes, but as frequent as possible to
20 ensure no unexpected health concerns or injuries occur?

21 *Response to Interrogatory No. 16:*

22 Responding Party objects to the interrogatory on the grounds that it is
23 vague, ambiguous, compound, unintelligible, and therefore incapable of
24 eliciting a meaningful response. Responding Party further objects that the
25 interrogatory is irrelevant and not likely to lead to the discovery of admissible
26 evidence because it lacks foundation as it incorrectly assumes a cord cuff
27 restraint was applied to Plaintiff until he was transported to San Diego Central
28 Jail and implies that Plaintiff required medical care. Subject to and without
waiving the foregoing objections, Responding Party responds as follows:

Plaintiff has a long history of violent and disruptive behavior while in
custody, including: fighting with deputies, secreting tools to facilitate escape,
threatening to harm and kill deputies and other inmates, possessing makeshift

1 weapons, failing to obey staff, and interfering with jail operations. On July 3,
 2 2014, Plaintiff was found to have secreted a handcuff key and a key used to
 3 unlock waist chains in his rectum, in a plot to escape Sheriff's custody. To
 4 safely secure Plaintiff and maintain institutional security, Plaintiff was
 5 properly restrained to prevent him from attacking jail staff or destroying
 6 evidence. After Plaintiff complained that his handcuffs were too tight,
 7 deputies immediately checked his handcuffs and addressed the issue. Plaintiff
 8 did not suffer any medical complications and he did not require medical
 9 assistance at any point during the incident.

10 (ECF No. 140 at 13–14.)

11 Plaintiff argues that Defendant did not directly answer Interrogatory No. 16 and
 12 “evasively ‘beats around the bush’ regarding the issue of” responsibility. (*Id.* at 7.) In
 13 opposition, Defendant argues that he provided “specific objections to the interrogatory
 14 given the argumentative phrasing and provided a substantive response,” in addition to
 15 documents setting forth his “duties and responsibilities as watch commander.” (ECF No.
 16 147 at 4.) Defendant further contends that “if Plaintiff wants an admission or denial, then
 17 the proper discovery device to use would be a request for admission.” (*Id.*)

18 Defendant included various objections in his response to Interrogatory No. 16, but
 19 does not specifically mention them or argue their merits in his opposition. Instead,
 20 Defendant states merely that he “provided specific objections to the interrogatory given the
 21 argumentative phrasing.”² (ECF No. 147 at 4.) The Court agrees with Plaintiff that

22 ² “When ruling on a motion to compel, a court ‘generally considers only those
 23 objections that have been timely asserted in the initial response to the discovery request
 24 and that are subsequently reasserted and relied upon in response to the motion to compel.’
 25 *SolarCity Corp. v. Doria*, Case No.: 16cv3085-JAH (RBB), 2018 WL 467898, at *3 (S.D.
 26 Cal. Jan. 18, 2018) (quoting *Medina v. County of San Diego*, Civil No. 08cv1252 BAS
 27 (RBB), 2014 WL 4793026, at *8 (S.D. Cal. Sept. 25, 2014)); *see also Black Mountain*
 28 *Equities, Inc. v. Players Network, Inc.*, Case No.: 3:18-cv-1745-BAS-AHG, 2020 WL
 2097600, at *3 (S.D. Cal. May 1, 2020) (declining “to address Defendant’s objections
 raised in its discovery responses because it did not reassert them within an opposition” to
 the motion to compel (citing *SolarCity Corp.*, 2018 WL 467898, at *3)). As mentioned,

Defendant's response does not directly answer Interrogatory No. 16. Although the Court agrees with Defendant that Interrogatory No. 16 is phrased as a request for admission, the Court does not find this to be an adequate basis in this case for Defendant to avoid answering the interrogatory, especially when it was propounded by a *pro se* litigant. Accordingly, Plaintiff's request to compel a further response to Interrogatory No. 16 is **GRANTED**, and Defendant is ordered to provide a supplemental response no later than **September 11, 2020**.

3. Interrogatory No. 18

Interrogatory No. 18 and Defendant's response thereto are as follows:

Interrogatory No. 18:

Has an inmate in the custody of the San Diego Sheriff's Department ever went into medical distress while in restraint equipment resulting in serious bodily injury or death?

Response to Interrogatory No. 18:

Responding Party objects to the interrogatory on the grounds that it is vague, ambiguous, and overbroad. Specifically, the request is vague as to the terms "medical distress," "restraint equipment," and "serious bodily injury." The interrogatory is also improper because it seeks medical information of unrelated individuals and therefore violates third-party privacy rights. Responding Party further objects that the interrogatory seeks information that is irrelevant to the subject matter of this action, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case in light of the factors set forth in [the] Federal Rules of Civil Procedure, [R]ule 26(b)(1). Lastly, the interrogatory seeks information that calls for expert medical opinion.

(ECF No. 140 at 15.)

Plaintiff argues that he is "seeking a simple yes or no answer to" Interrogatory No. 18. (*Id.* at 7.) In his opposition, Defendant stands on his objections that the request is "too

Defendant does not argue in support of any of his specific objections. "Argumentative" is not an objection Defendant made in his discovery response. (*See* ECF No. 140 at 13.) Therefore, Defendant's objections are overruled.

1 vague and broad to provide a response” and contends again that Plaintiff is mistaken about
 2 “the proper discovery tool to use when seeking a ‘simple yes or no answer.’” (ECF No.
 3 147 at 4.)

4 The Court agrees with Defendant and finds Interrogatory No. 18 vague and
 5 ambiguous as to the terms “medical distress” and “serious bodily injury” and overly broad
 6 as to time. Therefore, Defendant’s objections are SUSTAINED. Further, although
 7 Defendant did not reassert his relevancy objection in his opposition, Plaintiff has not met
 8 his burden to show the relevancy of this request, and the Court cannot otherwise determine
 9 its relevance. Accordingly, Plaintiff’s request to compel a response to Interrogatory
 10 No. 18 is **DENIED**.

11 4. Interrogatory No. 19

12 Interrogatory No. 19 and Defendant’s response thereto are as follows:

13 *Interrogatory No. 19:*

14 What is your reason or excuse for not ensuring medical personal (sic)
 15 was present (as supposed to be in-line or in alignment with San Diego County
 16 Sheriff’s Department Detention Services Bureau-Manuel of Policies and
 17 Procedures Number I.93 use of Restraint Equipment II Monitoring and
 Retention A-F (CSD000108-CSD00019) and/or page 1-2)?

18 *Response to Interrogatory No. 19:*

19 Responding Party objects to the interrogatory on the grounds that it is
 20 vague, ambiguous, overbroad, unintelligible, and therefore incapable of
 21 eliciting a meaningful response. Responding Party further objects that the
 22 interrogatory is irrelevant and not likely to lead to the discovery of admissible
 23 evidence because it lacks foundation as it incorrectly assumes a cord cuff
 24 restraint was applied to Plaintiff until he was transported to San Diego Central
 Jail and implies that Plaintiff required medical care. Subject to and without
 waiving the foregoing objections, Responding Party responds as follows:

25 Plaintiff has a long history of violent and disruptive behavior while in
 26 custody, including: fighting with deputies, secreting tools to facilitate escape,
 27 threatening to harm and kill deputies and other inmates, possessing makeshift
 28 weapons, failing to obey staff, and interfering with jail operations. On July 3,
 2014, Plaintiff was found to have secreted a handcuff key and a key used to

1 unlock waist chains in his rectum, in a plot to escape Sheriff's custody. To
 2 safely secure Plaintiff and maintain institutional security, Plaintiff was
 3 properly restrained to prevent him from attacking jail staff or destroying
 4 evidence. Plaintiff did not suffer any medical complications and he did not
 require medical assistance at any point during the incident.

5 (ECF No. 140 at 15–16.)

6 Plaintiff argues that Defendant's response to Interrogatory No. 19 does "not explain
 7 why he did not have medical present during the 7-3-14 incident where . . . [P]laintiff was
 8 in full restraints." (*Id.* at 8.) In his opposition, Defendant stands on his objections that the
 9 interrogatory lacks foundation, for "it incorrectly states that a cord cuff restraint was
 10 applied to Plaintiff" and "implies that Plaintiff required medical care." (ECF No. 147 at
 11 4.)

12 The Court finds that, notwithstanding Defendant's objections, he has sufficiently
 13 responded to Interrogatory No. 19. Defendant's response substantively addresses
 14 Plaintiff's interrogatory by stating his reasons for not ensuring the presence of medical
 15 personnel during the incident in question. Again, the fact that Plaintiff may not agree with
 16 Defendant's response does not render the response deficient. Accordingly, Plaintiff's
 17 request to compel a further response to Interrogatory No. 19 is **DENIED**.

18 **III. MOTION FOR ADDITIONAL INTERROGATORIES**

19 Plaintiff requests leave to propound more than twenty-five interrogatories on
 20 Defendant. (ECF No. 142.) Defendant opposes Plaintiff's request. (ECF No. 147 at 5.)

21 **A. Legal Standard**

22 Federal Rule of Civil Procedure 33 limits interrogatories to twenty-five per party,
 23 including discrete subparts, but a court may grant leave to serve additional interrogatories
 24 to the extent consistent with Rule 26(b)(1) and (2). Fed. R. Civ. P. 33(a). The twenty-five-
 25 interrogatory limit is not intended "to prevent needed discovery, but to provide judicial
 26 scrutiny before parties make potentially excessive use of this discovery device," and "[i]n
 27 many cases, it will be appropriate for the court to permit a larger number of interrogatories
 28" Fed. R. Civ. P. 33 advisory committee's note to 1993 amendment. Generally, a

party requesting additional interrogatories must make a “particularized showing” as to why additional discovery is necessary. *Roberts v. Hensley*, Case No.: 15cv1871-LAB (BLM), 2017 WL 715391, at *2 (S.D. Cal. Feb. 23, 2017) (quoting *Ioane v. Spjute*, No. 1:07-cv-00620-AWI-GSA, 2015 WL 1984835, at *1 (E.D. Cal. Apr. 20, 2015)).

B. Discussion

Plaintiff argues that because the case is “complex,” good cause exists for leave to propound more than twenty-five interrogatories. (ECF No. 142 at 4.) Plaintiff contends that he must “prove” the following “prior to summary [judgment]”:

- Defendant’s lack of medical treatment was intentional;
- Defendant’s use of force was unreasonable and excessive;
- Defendant’s treatment of Plaintiff was degrading to human dignity;
- Defendant acted with a culpable state of mind;
- The deprivation of medical care was sufficiently serious;
- Defendant acted with reckless disregard for Plaintiff’s health and safety;
- Defendant acted in bad faith and qualified immunity does not apply;
- Malice; and
- Knowledge

(*Id.* at 4–5.) Plaintiff further argues that, due to his incarceration, he “has no way to earn the funds required to [d]epose” Defendant. (*Id.* at 6.)

In opposition, Defendant argues that Plaintiff has “failed to provide good cause to justify additional interrogatories.” (ECF No. 147 at 5.) Contrary to Plaintiff’s assertion that the case is complex, Defendant contends that the case is “very limited in scope,” as “[i]t involves one defendant, one discrete incident on one day, and only two causes of action.” (*Id.*) Defendant further contends that the interrogatories Plaintiff has already propounded have been “argumentative, conclusory, and vague,” and Plaintiff “will likely continue [this] pattern of conduct” if the Court grants him leave to serve additional interrogatories. (*Id.*)

Good cause may exist to grant Plaintiff leave to serve additional interrogatories due to his status as an incarcerated litigant proceeding *pro se* and *in forma pauperis*. However,

1 Plaintiff has not made the particularized showing necessary for the Court to grant his
2 request. Plaintiff argues that the case is “complex” and lists several things he contends he
3 must “prove prior to summary [judgment].” (ECF No. 142 at 4.) However, Plaintiff has
4 not submitted any proposed interrogatories for review and does not provide what discovery
5 he has already propounded, why that discovery is inadequate, and what topics remain that
6 are necessary for him to explore by interrogatory. Plaintiff does not even specify the
7 number of additional interrogatories he is seeking to propound on Defendant. Moreover,
8 Defendant has moved to dismiss the 5AC, and the Court has recommended that
9 Defendant’s Motion to Dismiss be granted in part. (ECF Nos. 144; 149.) Therefore, which
10 of Plaintiff’s claims will survive dismissal, if any, and the issues in dispute in this case are
11 not yet certain.

12 Although the Court agrees with Defendant that this case is not particularly complex,
13 the Court will take into consideration Plaintiff’s status as a *pro se*, incarcerated litigant in
14 any future motion for additional interrogatories Plaintiff files after Defendant’s Motion to
15 Dismiss is decided. *See, e.g., McClellan v. Kern Cnty. Sheriff’s Office*, Case No. 1:10-cv-
16 0386-LJO-MJS (PC), 2015 WL 5732242, at *1 (E.D. Cal. Sept. 29, 2015) (“An
17 incarcerated party’s highly limited ability to conduct a deposition in prison may contribute
18 to a finding of good cause to file additional interrogatories.”); *McNeil v. Hayes*, No. 1:10-
19 cv-01746-AWI-SKO (PC), 2014 WL 1125014, at *2 (E.D. Cal. Mar. 20, 2014) (granting
20 the *pro se* inmate plaintiff leave to serve additional interrogatories and reasoning that
21 “depositions, which would relieve some of the pressure created by having to respond to
22 [additional] interrogatories, are simply not a realistic option, as incarcerated *pro se* litigants
23 are rarely in the position to conduct depositions”). In any future motion, Plaintiff should
24 include his proposed interrogatories and state specifically why those additional
25 interrogatories are necessary in light of the interrogatories already propounded on
26 Defendant. Additionally, Defendant’s argument that Plaintiff will only continue his pattern
27 of propounding “argumentative, conclusory, and vague requests” if granted leave to serve
28 additional interrogatories is not well taken. Given Plaintiff’s *pro se* status, some

1 imprecision in his discovery requests can be expected. Accordingly, Plaintiff's request for
2 additional interrogatories is **DENIED without prejudice**.

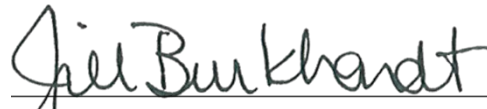
3 **IV. MOTION TO EXCLUDE EVIDENCE**

4 Finally, Plaintiff requests that the Court "permanently exclude the (all) statements
5 by [D]efendant and his witnesses to refrain from claiming 'Plaintiff had a plot to escape,'
6 due to the fact the [D]efendant has no evidence to support his claim of 'actual plan to
7 escape.'" (ECF No. 155 at 1.) Plaintiff argues that, although he "had in his possession a
8 handcuff key and master lock key," that "does not itself prove a 'plan' or 'plot' to escape
9 as [D]efendant['s] counsel and [D]efendant keep claiming." (*Id.* at 2.) Plaintiff also
10 requests the Court for an order compelling Defendant "to produce sufficient and reliable
11 evidence to support [his] claim of 'plot'/'plan' to escape" and argues that "if [he] cannot
12 produce sufficient evidence . . . then the [C]ourt should order the [him] to [a]mend his
13 [M]otion to [D]ismiss." (*Id.*) Plaintiff also argues that Defendant "commit[ed] perjury" in
14 his interrogatory responses by stating that "Plaintiff has a long history of violent and
15 disruptive behavior while in custody." (*Id.* at 2–3.)

16 The Court will not address a motion to exclude evidence in a vacuum. Plaintiff may
17 raise any appropriate objections to evidence proffered by Defendant³ in the context of the
18 proceeding at issue (such as at trial or in response to a motion for summary judgment).
19 Accordingly, Plaintiff's motion (ECF No. 155) is **DENIED without prejudice**.

20 **IT IS SO ORDERED.**

21 Dated: August 31, 2020

22 
23 Hon. Jill L. Burkhardt
24 United States Magistrate Judge
25
26

27 ³ Assertions in a pleading, except when sworn to under penalty of perjury, do not
28 ordinarily constitute evidence.